

III.A.1.a

MEMO TO: City Council

FROM: Rosemarie Ives, Mayor **QUASI-JUDICIAL**

DATE: September 12, 2006

**SUBJECT: PUBLIC HEARING: PRELIMINARY PLAT APPEAL, HANSON
PLANNED RESIDENTIAL DEVELOPMENT (PRD), L060287**

I. RECOMMENDED ACTION

Support the Hearing Examiner's decision to require pedestrian-related frontage improvements as a condition of preliminary plat approval as outlined in the Hearing Examiner's report dated June 1, 2006 and as amended July 5, 2006.

II. DEPARTMENT CONTACT PERSONS

Rob Odle, Director, Planning and Community Development Department, 425-556-2417
Richard Barthol, Transportation Engineering Manager, Public Works, 425-556-2736
Judd Black, Development Review Division Manager, 425-556-2426
Kerry Kriner, Associate Planner, 425-556-2464

III. DESCRIPTION/BACKGROUND

On May 8, 2006 a public hearing regarding the Hanson Preliminary Plat/Planned Residential Development (PRD) was held before the City's Hearing Examiner. The Examiner issued a decision on June 1, 2006 to approve the preliminary plat with specific conditions and recommended approval of the PRD to the City Council. D.R. Horton filed a Request for Reconsideration with the Hearing Examiner regarding a condition of approval for frontage and street improvements along Redmond Way. The Examiner modified this condition as part of his July 5, 2006 Order on Motions for Reconsideration to eliminate requirements for undergrounding of power and telecommunication facilities and modifications to vehicle lanes and the crown of the street. Other improvements directly related to pedestrian access to and along the Redmond Way frontage are still required.

On July 29, 2006, D.R. Horton filed an appeal with the Planning and Community Development Department concerning the condition for pedestrian-related frontage improvements along Redmond Way. The applicant contends that the condition should not be imposed as part of the Hanson development because (a) the proposed subdivision does not take access directly from Redmond Way; (b) the applicant is already constructing improvements along NE 85th Street, the street from where the development does gain access; and (c) Redmond Way has an existing sidewalk along the Hanson

property frontage. Additionally, the applicant contends that the Redmond Way frontage improvements are included in the City's Transportation Improvement Program (TIP), and therefore, funding for the improvements will come from impact fees and other City funding sources, including funding from Sound Transit.

Technical Committee Recommendation

Impact fees only cover a portion of the total funding for any one street improvement project. The preliminary cost estimate for the Redmond Way TIP project is \$1.7 million, with a \$1.4 million share from Sound Transit and \$0.3 million from the City of Redmond. The City share will come from impact fees or the installation of improvements funded by developers, for which they receive impact fee credits. The City has determined that the Hanson development provides significant vehicular and pedestrian impacts to Redmond Way. Therefore, the Technical Committee supports the Hearing Examiner's condition to install pedestrian-related improvements along the Redmond Way frontage of the Hanson site.

IV. IMPACT

- A. Service Delivery:** Staff does not anticipate a significant impact in service delivery needs as a result of the approval of this project.
- B. Fiscal:** Staff does not anticipate a significant fiscal impact as a result of the approval of this project.

V. ALTERNATIVES

- A. Support the Hearing Examiner's decision.** The Hearing Examiner approved the Hanson Preliminary Plat with conditions. One of the conditions of approval was a requirement for pedestrian-related frontage improvements along Redmond Way. Denying the appeal and upholding this condition will result in D.R. Horton constructing a portion of the improvements under the Redmond Way Improvements TIP and receiving impact fee credits. An alternative is D.R. Horton can provide a financial contribution equivalent to the cost of the improvements and the City will construct the improvements as part of the larger TIP project.
- B. Concur with D.R. Horton's position.** The City Council can reject the Hearing Examiner's decision to impose a condition for pedestrian-related frontage improvements along Redmond Way in front of the Hanson site. Under this alternative, the applicant would not be responsible for construction or financing of these improvements, however would still be required to pay transportation impact fees required under the City's impact fee ordinance.

C. Support the Hearing Examiner's decision with modifications. The City Council may chose to issue a decision in support of the Hearing Examiner's decision, however modify the frontage improvement condition. This alternative may include imposition of the original condition of approval from the Examiner's June 1, 2006 decision requiring additional street improvements or other additional improvements as the Council deems necessary based on the impacts of the proposed development.

VI. TIME CONSTRAINTS

The time period for consideration and decision on appeals shall not exceed sixty (60) days from the date the appeal was filed for closed record appeals. The Preliminary Plat appeal was filed on July 19, 2006, requiring City Council consideration and decision by September 19, 2006, unless an extension of the 60 days is mutually agreed upon by the appellant and the City.

VII. LIST OF ATTACHMENTS

Attachment A: D.R. Horton Appeal Application materials

Attachment B: Hanson PRD Site Plan

/s/
Robert G. Odle, Planning Director

8/31/06
Date

Approved for Council Agenda: /s/
Rosemarie Ives, Mayor

9/1/06
Date

ATTACHMENT A



CITY OF REDMOND APPEAL APPLICATION FORM

RECEIVED
CITY OF REDMOND

JUL 19 2006

DEVELOPMENT
SERVICES CENTER

(Staff Use Only)

DEV No. _____

Project No. _____

File No: L060287

Date Received _____

This appeal application form is for appeals of Technical Committee and Hearing Examiner decisions only. Appeals may be delivered to the Development Services Center by mail, personal delivery or by fax before 5:00 P.M. on the last day of the appeal period. Appeals may be mailed to the City of Redmond Development Services Center, 2SPL, P.O. Box 97010, Redmond WA 98073. Appeals may be faxed to the Permit Center at 425-556-2400 Attention: Counter Planner.

Appeals of City Council decisions may be appealed to Superior Court by filing a land use petition which meets the requirements set forth in Chapter 36 70C RCW. The petition must be filed and served upon all necessary parties as set forth in state law and within the 21-day time period as set forth in RCW 36.70C.040. Requirements for fully exhausting City administrative appeal opportunities must be fulfilled. If you wish to appeal the decision on a Shoreline Permit or a Hearing Examiner decision on a SEPA appeal, please contact the Planning Department for appropriate procedures.

Section A. General Information

Name of Applicant (Appellant): DR Horton

Address: c/o Duana T. Kolouskova, Johns Monroe Mitsunaga PLLC

City: 1601 - 114th Ave SE #110 State: WA Zip: 98004 Phone # 425-451-2812
Bellevue WA

What is your relationship to the project? (circle one)

Interested citizen Project applicant Government Agency

Name of project that is being appealed: Hanson PRD/PPL

File number of project that is being appealed: L050338; L050339; L060095

Date of decision on project you are appealing: 7/5/06 Expiration date of appeal period: 7/19/06

Please put an 'x' next to the applicable appeal:

☐ Appeal to the Hearing Examiner of a Technical Committee Decision

☐ Appeal to City Council of a Hearing Examiner decision on an appeal

☐ Appeal to City Council of a Hearing Examiner Decision

Pursuant to the Redmond Community Development Guide only certain individuals have standing to appeal a decision on an application or appeal. Below, please provide a statement describing your standing to appeal. (Please see back page to determine if you have standing to appeal)

Appellant DR Horton is the applicant.

ORIGINAL

Section B. Basis for Appeal

Instructions: If you are appealing a Technical Committee Decision, please fill out items 1, 2 and 3 only. If you are appealing a Hearing Examiner's decision, or a Hearing Examiner's decision on an appeal, you only need to fill out item 4 below. You may attach additional sheets if necessary.

1. Please state the facts demonstrating how you are adversely affected by the decision (attach additional sheets if necessary):

2. Please provide a concise statement identifying each alleged error and how the decision has failed to meet the applicable decision criteria. (Attach additional sheet if necessary.)

3. Please state the specific relief requested (attach additional sheets if necessary).

4. Please provide a written statement of the findings of fact or conclusions (as outlined in the Hearing Examiner's decision) which are being appealed. (attach additional sheets if necessary)

See attached.

Standing To Appeal

Technical Committee Decisions

For appeals of a Technical Committee Decision on a Type I or II permit, the project applicant or any person who submitted written comments (party of record) prior to the date of the decision was issued may appeal the decision. The written appeal must be received by the Redmond Development Services Center no later than 5:00 PM on the 14th day following the date of the decision of the Department.

Hearing Examiner Decision on Appeals of Technical Committee Decisions

For appeals of a Hearing Examiner Decision on an Appeal of a Technical Committee Decision, the project applicant, any person who participated in the public hearing as provided for in RCDG 20F.30.30-060 or the City may appeal.

Hearing Examiner Decisions

For appeals of a Hearing Examiner Decision, the project applicant, any person who participated in the public hearing as provided for in RCDG 20F.30.40-080 or City may appeal.

Rev 6/2006 O:\pcforms\Application Requirements\Appeal Form.doc

1
2 **APPLICANT DR HORTON'S CONTENTION REGARDING PROPOSED PRD**
3 **PLAT CONDITION**

4 The Applicant, DR Horton, respectfully requests the City Council not to impose a
5 conditions recommended by the Hearing Examiner in his decision and reconsideration, which
6 is set forth as follows:

7 2. Street improvements are required along the frontage of Redmond Way
8 including constructing/modifying type A-1 concrete curb and gutter, 5-foot
9 wide planter strip, 5-foot wide concrete sidewalk, storm drainage, street lights,
10 and street trees to match the City's planned improvements for Redmond Way
(project number 05-CI-72). In lieu of constructing the improvements, the
11 applicant may pay a fee to have the improvements included in the City project.

12 The minimum pavement section where needed for the street consist of:

13 4" Asphalt Pavement C1.B

14 5" Asphalt Treated Base

15 Subgrade compacted to 95% compacted maximum density as
16 determined by modified Proctor (ASTMD1557)

17 Street 2% sloped to drain system.

18 *Order on Motion for Reconsideration, July 5, 2006, page 5.*

19 **A. The Law Strictly Limits Conditions on Plat Approval to Those Which Mitigate**
20 **Impacts of a Proposed Development and are Roughly Proportional.**

21 Conditions placed on a preliminary plat approval must have some basis in statutory
22 law and a relationship to the impacts a proposed development may have on the public health,
23 safety and welfare. RCW 58.17.110. Any condition placed approval and development of a
24 subdivision must alleviate an impact of the development. *Isla Verde Holdings v. City of*
25 *Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002). Our Supreme Court advises that, "while a
municipality has authority to make appropriate provisions for the public health, safety, and
welfare, and to condition plat approval accordingly, it does not have authority to require a
developer "to shoulder an economic burden, which in justice and fairness the public should
rightfully bear'." *Isla Verde v. City of Camas*, 146 Wn.2d 740, 881, 49 P.3d 867 (2002).

1 In order to impose a condition on a proposed development, that condition must be
2 directly related and proportionate to the impacts of that development. *Benchmark v. City of*
3 *Battle Ground*, 94 Wn. App. 537, 972 P.2d 944 (1999). In *Benchmark*, the City of Battle
4 Ground imposed a condition that Benchmark construct half street improvements to an
5 adjacent street, North Parkway, despite the facts that (a) the development would not access
6 North Parkway directly and (b) traffic studies demonstrated that the traffic impact on North
7 Parkway would be minimal. *Benchmark*, 546-547. The court held that "there is no necessary
8 correlation between the extent a development borders a street and the extent to which
9 residents of the development will actually use the street." *Id.* The Court concluded that the
10 condition requiring Benchmark to construct half-street improvements to the adjacent road
11 was unlawful for two reasons: first, the proposed development would have minimal impacts
12 on the road at issue; and second, the trips that would use the road would mainly use the road
13 as it extends south of the development, whereas the half-street improvement condition would
14 pertain to the portion of North Parkway adjacent to the development, which is north of
15 Onsdorf Street. *Id.* As a result, the condition primarily lacked a nexus to the impacts of the
16 development, but also would have lacked proportionality.

17 Finally, a city cannot impose a condition where the condition addresses an existing
18 deficiency. *UDC v. City of Mill Creek*, 106 Wn. App. 681, 26 P.3d 943 (2001). In *UDC*, the
19 Court rejected Mill Creek's attempt to condition UDC's preliminary plat on a condition that
20 UDC mail frontage improvements for drainage along an adjacent road. *UDC* at 686, 698.
21 The Court determined that there was no direct and reasonable relationship between the
22 effects of UDC's proposed development and the required condition. The Court rejected the
23 City's fallback justification that it needed to bring the adjacent street "up to code." *UDC* at
24 698.
25

1 **B. The Proposed Condition to Construct Frontage Improvements to Redmond Way**
2 **Fails to Comply with the Requirements that Conditions Reasonably and**
3 **Proportionally Relate to the Impacts of the Proposed Development.**

4 The Hearing Examiner's recommended condition fails to acknowledge that (a) the
5 proposed Hanson subdivision ("Hanson") will not take access directly off of Redmond Way;
6 (b) the Applicant will already be constructing frontage improvements along N.E. 85th, the
7 road that Hanson does front; and (c) Redmond Way has an existing sidewalk along the
8 Hanson property.

9 This recommended condition attempts to force the Applicant to shoulder a burden
10 which the public rightfully should bear as a whole. There are no significant impacts from the
11 Hanson subdivision that would necessitate these frontage improvements or that are
12 proportionate to the costs of constructing these extensive improvements. Instead, this is
13 rightfully the territory of road improvement projects which the City should pay for as a
14 whole by all residents. In fact, the City currently has a transportation improvement project to
15 construct frontage improvements along Redmond Way. These improvements are already
16 funded, and therefore this requirement is essentially 'double dipping'. This issue is discussed
17 in more detail later in this brief.

18 The proposed requirement to construct frontage improvements to Redmond Way fails
19 to comply with state law discussed above in several ways. First, the condition is not related
20 to impacts of the Hanson proposed subdivision. Second, even if the City could create a
21 relationship, the proposed condition is not proportionate to any such impacts. Third, the
22 proposed condition is in fact an attempt to address an existing deficiency: there is currently a
23 sidewalk on Redmond Way running along the Hanson site. However, the City wishes to
24 upgrade that sidewalk and add further improvements that have no relationship to the
25 proposed subdivision.

1 First, there is no evidence that the proposed Hanson subdivision creates an impact
2 that would require construction of extensive frontage improvements on Redmond Way. As
3 the *Benchmark Court* noted, there is no necessary correlation between streets on which a
4 development may border and the extent to which residents would actually use that street (or
5 frontage).

6 The sole justification staff presents for this condition is that residents of Hanson may
7 want to walk from the subdivision to Grass Lawn Park and Rose Hill Junior High School. As
8 a primary matter, residents will be able to walk from Hanson anywhere as there are existing
9 sidewalks on Redmond Way. However, the shortest and most direct, i.e. reasonable, walk
10 from Hanson to either of those locations would not be along the Hanson frontage. Instead,
11 residents would walk from 139th Avenue N.E. in an eastern direction to 140th. Even if a
12 resident were to use the internal pedestrian connection to Redmond Way, that pedestrian
13 connection links to an existing sidewalk on Redmond Way in the middle of the plat. The
14 intersection of 140th and Redmond Way is signalized with a crosswalk. A resident would
15 then continue directly to either to the park or the junior high school.

16 The fact that the existing sidewalk may be deficient under the City's current
17 development standards is not justification to force this Applicant to pay the entire costs of
18 these improvements. *UDC v. City of Mill Creek*, 106 Wn. App. 681, 26 P.3d 943 (2001).
19 The proposed condition is really intended to upgrade what the City perceives to be an
20 existing deficiency. The Hanson property frontage along Redmond Way currently has a
21 separated sidewalk and curb. However, it is evident that there is a desire within the City to
22 upgrade the frontage improvements along Redmond Way and for the Applicant to pay for
23 those costs. *See e.g. Staff recommendation*, page 33 (current conditions are not adequate in
24 staff's opinion). Such justification is in violation of state law, as shown in *UDC*, discussed
25 above. This condition violates *UDC* because frontage improvements cannot be imposed as

1 condition of approval simply because they are a good idea or because the City does not like
2 the existing sidewalk.

3 In addition, the condition goes far beyond any impacts of pedestrians from Hanson as
4 the condition would require the Applicant to construct and install storm drainage, street lights
5 and street trees. Clearly, none of these elements of the condition relate in any way to any
6 impacts of the proposed Hanson development. There is no justification in the record at all to
7 support this aspect of the recommended condition (i.e. storm drainage, street lights and street
8 trees).

9 **C. The Applicant is Already Paying its Fair Share to the City's Transportation**
10 **System and the Requested Improvements on Redmond Way are Already**
11 **Funded Through Another Source.**

12 Beyond the lack of nexus and rough proportionality, discussed above, the Applicant
13 requests the City Council not to impose the condition to construct improvements to Redmond
14 Way for additional three reasons:

- 15 (1) The improvements to Redmond Way are not "frontage improvements": the Applicant
16 is already required to construct frontage improvements to 85th Street.
17 (2) The Applicant will be paying impact fees to mitigate all impacts of the proposed
18 subdivision on the City's roadway system.
19 (3) Construction of the improvements to Redmond Way are already funded by Sound
20 Transit.

21 First, the improvements to Redmond Way are not "frontage improvements" for the
22 Hanson subdivision. Instead, the Applicant is already constructing frontage improvements
23 on 85th Street. Those frontage improvements include planter strip, sidewalk, storm drainage,
24 street lights, street trees, street signs, undergrounding utilities, and modifying vehicle travel
25 lanes to add width and regrade street crown.

1 Second, the Applicant will also pay impact fees to address the subdivision's impacts
2 on the City's roadway system. The purpose of those impact fees is to pay for the
3 development's impacts on the City's road system (aside from frontage improvements,
4 addressed above). The City uses impact fees to fund a variety of road projects such as the
5 project at issue along Redmond Way (TIP project number T5). As was shown in the
6 Applicant's traffic impact analysis and testified to at the hearing, the Hanson development
7 will have an absolutely *de minimis* impact on Redmond Way.

8 The payment of impact fees will adequately cover these minor impacts. The City has
9 failed to show that the Hanson subdivision creates more impacts on the sidewalk than are
10 already covered by the impact fees to be paid. Staff's proposal that it will give the Applicant
11 a credit for impact fees does not solve this problem. First, there is simply no justification for
12 requiring the Applicant to pay for extensive and expensive improvements that go well
13 beyond the small impacts of the proposed subdivision. Second, the credit for impact fees is
14 minimal in comparison to the extensive costs to construct the recommended improvements.

15 Third, the City would illegally receive a windfall and would be acting in an arbitrary
16 manner by requiring the Applicant (a) to pay impact fees, (b) to construct road improvements
17 that are considered system improvements under the TIP and (c) accept funding from another
18 source (Sound Transit) for those very same improvements. The City would act unlawfully
19 were the City to require the Applicant to construct or pay for a system improvement that is
20 already funded by an outside source. *See e.g.*, RCW 82.02.050 (the intent of impact fees
21 ordinances is to ensure that developments do not pay arbitrary or duplicative fees for the
22 same impact).

23 The City is not entitled to the windfall it would receive if it can require the Applicant
24 to pay impact fees and construct a project that the City has included as a necessary system
25 improvement, and also collect funding from an outside agency for the identical project. The

1 City's 2006-2011 Transportation Improvement Program ("TIP") affirmatively sets out a road
2 project that encompasses the improvements to Redmond Way that staff requested the
3 Applicant to construct. Generally, funding of these system projects are handled through
4 impact fees and other City funding sources. However, in the case of improvements to
5 Redmond Way between 120th and 140th Avenues N.E. (the area where the Hanson plat is
6 located), the City has expressly set forth that this specific project is already funded by Sound
7 Transit. *TIP*, page 19. In other words, the City's TIP sets forth a transportation improvement
8 project that is fully funded by Sound Transit which will pay for construction of exactly those
9 improvements that staff wants the Applicant to construct. Staff's belated comments in its
10 response to reconsideration that the project is likely to be more expensive than originally
11 anticipated (1.7 million versus 1.4 million) (a) are not borne out by any substantive evidence,
12 (b) do not state whether any cost overruns will also be paid for by Sound Transit, and (c) do
13 not provide any appropriate justification for requiring the Applicant to fund more than its fair
14 share of road improvements (again, which the Applicant will satisfy through payment of
15 impact fees).

16 It appears that the basis for the Hearing Examiner's recommended condition was to
17 provide improved walking conditions for school children and pedestrians accessing transit
18 stops. This would be consistent with Staff's sole asserted basis for requesting that the
19 Applicant construct improvements, i.e. to ensure that pedestrians from Hanson can use a
20 sidewalk and transit stops on Redmond Way. The purpose of the Sound Transit-funded
21 project is "to improve transit and vehicle flow in the corridor, improve pedestrian access to
22 transit, and improve safety in the corridor." *TIP*, page 19. Therefore, the TIP project is
23 based on the same justifications as those asserted as the basis for the recommended condition
24 on the Hanson preliminary plat.
25

1 **D. Conclusion.**

2 The Applicant respectfully requests the City Council not to impose a condition on the
3 Hanson development requiring the Applicant to construct street and sidewalk improvements
4 for Redmond Way.

5
6 DATED this 19th day of July, 2006.

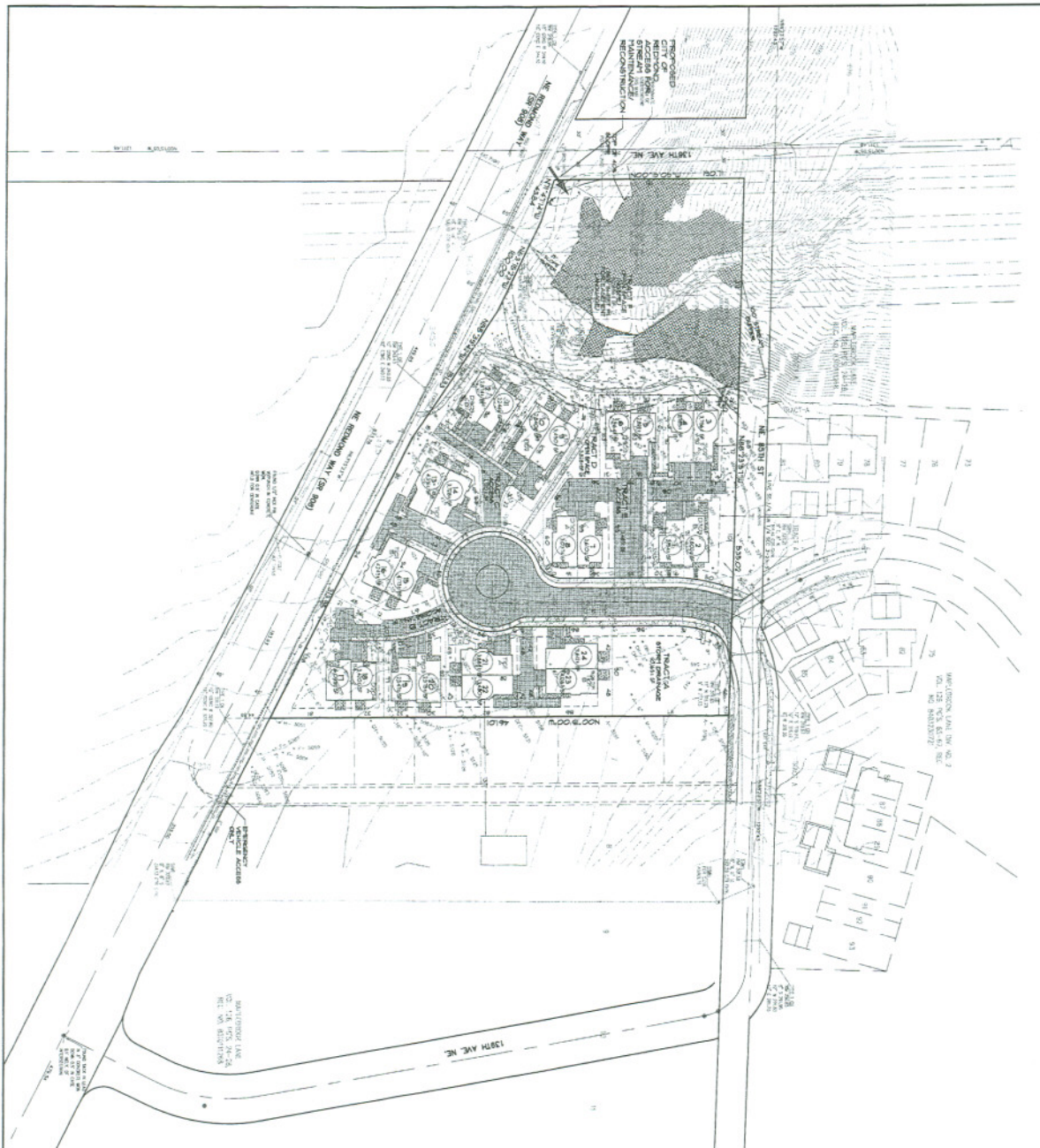
7 JOHNS MONROE MITSUNAGA, PLLC

8
9 By 

10 Duana Koloušková, WSBA #27532
11 Attorneys for DR Horton

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22 422-4 Administrative Appeal 7-19-06
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ATTACHMENT B



S.W. 1/4, SEC. 3, TWP. 25 N., RGE. 5 E., W.M.



SCALE: 1" = 50'



BASIS OF BEARINGS

QUARTER CIRCLE OF SEC. 3, CALCULATED FROM COORDINATE VALUES PUBLISHED BY THE CITY OF REDWOOD FOR CITY OF REDWOOD HORIZONTAL CONTROL, NOVEMBER PUBLISHED 1993.

DATUM

RECEIVED BY THE EDITOR MAY 20, 1987. (DATE OF RECEIVING OFFICE)

BENCHMARK

0.25 FOOT DIA. BRASS DISK IN 0.50 FOOT DIA. CONCRETE MONUMENT IN SOUTHEAST CORNER OF INTERSECTION OF NE 80TH STREET AND 13540 AVENUE NE.
0.45 FEET BELOW TOP OF CASE. STAMPED - BENCHMARK DO CORNER
ELEVATION = 435.78 (132.87M)

P.R.D. SITEPLAN
HANSON PROPERTY P.R.D.
D.R. HORTON
12931 N.E. 126TH PL.
KIRKLAND, WASHINGTON 98034



14711 NE 29th Place Suite 101
Bellevue, Washington 98007
425.885.7877 Fax 425.885.7963



PROJECT NUMBER 05063	P4	SHEET	OF	DATE	AUGUST 2005
				DESIGNED	BWN
				DRAWN	LRB
				APPROVED	MC
				JAMES A. OLSEN, P.E. PROJECT MANAGER	